

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Rocky Mel Contreras,

Case No. 23-cv-2500 (PJS/DJF)

Plaintiff,

v.

**ORDER**

J. Barker, Badge #163, Security, and  
Hennepin County Medical Center,

Defendants.

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On September 8, 2023, the Court ordered plaintiff Rocky Mel Contreras to show cause why this matter should not be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). (ECF No. 4.) The Court directed Mr. Contreras to either to file a responsive memorandum explaining how his complaint (ECF No. 1) stated a viable claim for relief or, in the alternative, to file an amended complaint that pleaded a viable claim for relief. (ECF No. 4.)

On September 28, 2023, Mr. Contreras filed a document labeled “Motion to Amend” but which actually appears to be an amended complaint. (See ECF No. 6.) Mr. Contreras did not need to file a motion to amend his Complaint because the Court’s leave is not required to amend pleadings at this stage of the proceedings. See Fed. R. Civ. P. 15(a)(1). For sake of clarity, however, the Court grants Mr. Contreras’s Motion to Amend and directs the Clerk of Court to refile the document as an amended complaint. The amended complaint is now the operative pleading in this matter.

This Court has reviewed Mr. Contreras’s amended complaint and concludes that he has pleaded at least one colorable claim for relief against the defendants. Accordingly, the Court grants his application to proceed *in forma pauperis* (ECF No. 2) and directs that service of process be

effected upon Defendants. This Order does not preclude Defendants from seeking dismissal of the amended complaint for failure to state a claim on which relief may be granted or for any other reason after service of process is effected.

### **ORDER**

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff Rocky Mel Contreras's application to proceed *in forma pauperis* (ECF No. [2]) is **GRANTED**.
2. Mr. Contreras must submit a properly completed Marshal Service Form (Form USM-285) for each Defendant. If Mr. Contreras does not complete and return the Marshal Service Forms by November 13, 2023, the Court may recommend that this matter be dismissed without prejudice for failure to prosecute. The Court will provide Marshal Service Forms to Mr. Contreras.
3. After Mr. Contreras returns the completed Marshal Service Forms, the Court directs the Clerk of to seek waiver of service from Defendants J. Barker and Hennepin County Medical Center, consistent with Rule 4(d) of the Federal Rules of Civil Procedure.
4. If either Defendant fails without good cause to sign and return a waiver within 30 days of the date that the waiver is mailed, the Court will impose upon that Defendant the expenses later incurred in effecting service of process. Absent a showing of good cause, reimbursement of the costs of service is mandatory and the Court will impose reimbursement in all cases in which a Defendant does not sign and return a waiver of service form. *See* Fed. R. Civ. P. 4(d)(2).

5. Mr. Contreras's motion to amend (ECF No. [6]) is **GRANTED**. The Court directs the Clerk of Court is to refile this document as an amended complaint.

Dated: October 13, 2023

*s/ Dulce J. Foster*

DULCE J. FOSTER

United States Magistrate Judge